FILED
UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING
10:22 am, 1/20/17
Stephan Harris
Clerk of Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY MILLER,

Defendant.

Case No: 15-CR-239-F

ORDER DENYING DEFENDANT'S MOTION TO CONTINUE TRIAL

This matter is before the Court on the Defendant's Motion to Continue Trial. (Doc. 37). This is Defendant's second motion seeking to continue his trial in this matter because his baby is due at the end of January and his wife is currently having complications. Defendant now also asserts there is additional discovery that is material to this case. The Court has reviewed the motion and is fully informed in the premises.

Facts

1. The Grand Jury returned an Indictment against Defendant on November 18, 2015, alleging Fraud with Identification Documents (Count One) and Unlawful Use of a Means of Identification. (Count Two). (Doc. 1).

2. On September 15, 2016, Defendant made his initial appearance in this district. (Doc. 6). The Court arraigned Defendant on September 19, 2016 and Defendant entered pleas of not guilty. (Doc. 15). The Court released Defendant on a $10,000.00

appearance bond. The Court set trial in this matter for November 28, 2016. (Docs. 25, 32).

3. Then on September 22, 2016, the Grand Jury returned a Superceding Indictment against Defendant asserting two additional charges for misuse of a social security number (Count Three) and Aggravated Identity Theft (Count Four). (Doc. 18).

4. Defendant appeared on the Superceding Indictment on October 12, 2016 and entered pleas of not guilty.

5. On November 3, 2016 the Government filed a motion to continue asserting that Government's counsel has another trial going that same day and would need a short continuance to be able to handle both trials.

6. The Court granted a short continuance and trial in this matter was reset for December 5, 2016,

7. On November 18, 2016, Defendant retained new counsel and the Court granted him a continuance to February 7, 2017.

Discussion

The Speedy Trial Act generally requires trial to begin within 70 days of the filing of the indictment or the Defendant's initial appearance, whichever is later. 18 U.S.C. § 3161(c)(1); *Zedner v. United States*, 126 S.Ct. 1976, 1983 (2006). The Act sets forth an extensive list of reasons allowing for periods of delay, which are excluded in computing the time within which trial must start. 18 U.S.C. § 3161(h); *Zedner*, 126 S.Ct. at 1983. One avenue for granting continuances and excluding resulting delay may be the Speedy Trial Act's provisions allowing for so called "ends of justice" continuances.

Zedner, 126 S.Ct. at 1983-84; see 18 U.S.C. § 3161(h)(7). Specifically, this provision allows district courts to continue trial and exclude delay if the court finds, on the record, "that the ends of justice served by granting the continuance outweigh the public's and defendant's interests in a speedy trial." *Zedner*, at 1984. The Court's reasons for granting an ends of justice continuance must be made on the record, either orally or in writing. *Id*. at 1989; 18 U.S.C. § 3161(h)(7)(A). The statute permits a Court to consider whether "the failure to grant such a continuance would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(7)(B)(iv).

As the Court has already indicated, Defendant's family situation is not a basis for continuing the trial in this matter. While Defendant also refers to additional evidence and potential subpoenas, the Court finds that this information is too vague and indefinite to provide for an ends of justice continuance. There is no statement of what this evidence is or why it was not available at an earlier time. This case was originally set to go on November 28, 2016 and the Court continued the trial for seventy days to allow Defendant's new counsel sufficient time to prepare for this matter. There is no basis for the Court to find that a continuance is necessary for effective preparation, taking into account the exercise of due diligence. For all these reasons, the Court finds that Defendant has failed to provide the Court with basis to continue the trial in this matter.

IT IS ORDERED that the Defendant's Motion to Continue Trial is DENIED.

Dated this 20th day of January, 2017.

NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE